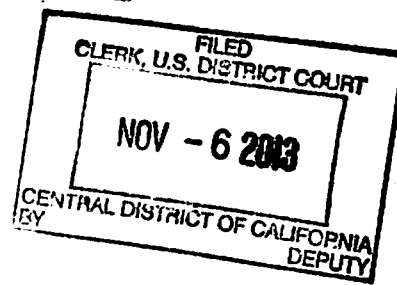


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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE NUTRO COMPANY
Plaintiff,
v.
ILIO PRODUCTS LLC
Defendant.

CV 13-8240 GAF (VBKx)
Case No.
**COMPLAINT FOR DAMAGES AND
INJUNCTIVE AND
DECLARATORY RELIEF**
JURY TRIAL DEMANDED

Plaintiff The Nutro Company ("Nutro"), by its undersigned counsel, brings this action against Defendant Ilio Products LLC ("Ilio" or "Defendant"), and alleges as follows:

1. This is an action for trademark infringement, trade dress infringement, false designation of origin, and unfair competition arising under the statutes of the United States (Trademark Act of 1946, 15 U.S.C. § 1051 *et seq.*), the statutes of the State of California (California Business and Professions Code section 17200, *et seq.*), and the common law.

COPY

THE PARTIES

2. Nutro is a corporation organized and existing under the laws of the State of California with a principal place of business at 315 Cool Springs Blvd., Franklin, Tennessee 37067.

3. Upon information and belief, Defendant Ilio is a limited liability company organized and existing under the laws of the State of Hawaii with a principal place of business at 850 Kawaihao Street, Suite 305, Honolulu, Hawaii 96813.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action under Section 39 of the Lanham Act, 15 U.S.C. § 1121, as well as 28 U.S.C. §§ 1331, 1332, and 1338, and the doctrine of supplemental jurisdiction, 28 U.S.C. § 1367. The amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and the parties are of diverse citizenship.

5. Upon information and belief, this Court has personal jurisdiction over Defendant because it regularly solicits, transacts, and does business within the State of California and within this District, and the claims in this action arise out of such business in this District.

6. Upon information and belief, Defendant has caused and is causing injury within this District by advertising, distributing, and selling infringing products in this District.

7. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims alleged herein occurred in this District.

FACTUAL BACKGROUND

NUTRO'S RIGHTS IN THE GREENIES® TOOTHBRUSH DESIGN TRADEMARK AND TRADE DRESS AND THE GREENIES® PACKAGING DESIGN TRADEMARK AND TRADE DRESS

8. Nutro is a leading developer and manufacturer of premium pet food products that are sold in the United States and throughout the world. Nutro has been developing and manufacturing premium pet food for over eighty years.

9. One of Nutro's most successful products is its line of canine dental chews sold under the famous word mark GREENIES.

10. Nutro also distinguishes its GREENIES canine dental chews from those sold by others by using a highly distinctive and unique three-dimensional product configuration mark and two-dimensional design mark featuring a toothbrush head combined with a bone-shaped handle (the "GREENIES Toothbrush Design Trademark and Trade Dress").

11. An image of a GREENIES canine dental chew bearing the GREENIES Toothbrush Design Trademark and Trade Dress appears below, and in Exhibit A attached hereto.




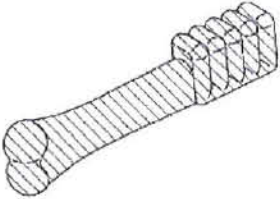
12. In addition, GREENIES canine dental chews have been and are sold in a distinctive product packaging design trademark and trade dress containing the following elements: the GREENIES trademark displayed in arched green lettering; below that, an image of a dog with a green elongated toothbrush-shaped dental chew in its mouth; below that, an image of a green elongated toothbrush-shaped dental chew with a white star on the bristles of the chew design; an image of a

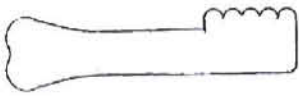



white tooth near the edge of the package; and a two-toned background featuring a U-shaped green border (all of the foregoing, collectively, the “GREENIES Packaging Design Trademark and Trade Dress”). Examples of packaging bearing the GREENIES Packaging Design Trademark and Trade Dress are depicted below, and in Exhibit B attached hereto.





13. Below is a summary of Nutro's United States trademark registrations for the GREENIES Toothbrush Design Trademark and Trade Dress, the GREENIES Packaging Design Trademark and Trade Dress, and certain individual marks contained within the GREENIES Packaging Design Trademark and Trade Dress:

Mark	Registration Number	First Use Date	Registration Date	Goods
 (Incontestable Registration) Description of mark: "A configuration of a dog bone with the shape of a head of a tooth brush at one end, all portions are the color green." The color green is claimed as a feature of the mark.	3,122,596	November 2000	August 1, 2006	Pet snack food
 (Incontestable Registration) Description of mark: "A configuration of a dog bone with the shape of a head of a tooth brush at one end." Color is not claimed as a feature of the mark.	3,220,981	September 1996	March 27, 2007	Pet Food

Mark	Registration Number	First Use Date	Registration Date	Goods
 (Incontestable Registration)	3,340,413	November 2000	November 20, 2007	Pet food
	3,869,170	June 2008	August 5, 2009	Pet food and pet treats
 (Incontestable Registration)	2,874,574	September 1996	August 17, 2004	Pet food and pet treats
	3,869,171	June 2006	November 2, 2010	Pet food and pet treats

14. Nutro's predecessor in interest first used the GREENIES Toothbrush Design Trademark and Trade Dress at least as early as 1996 in connection with the advertising and sale of canine dental chews in the United States, and the

1 GREENIES Toothbrush Design Trademark and Trade Dress is in use in commerce
2 throughout the United States.

3 15. Nutro first used the GREENIES Packaging Design Trademark and
4 Trade Dress at least as early as 2008 in connection with the advertising and sale of
5 canine dental chews in the United States, and the GREENIES Packaging Design
6 Trademark and Trade Dress is in use in commerce throughout the United States.

7 16. Products bearing the GREENIES Toothbrush Design Trademark and
8 Trade Dress revolutionized the pet treat market when they were introduced.
9 Products bearing the GREENIES Toothbrush Design Trademark and Trade Dress
10 and the GREENIES Packaging Design Trademark and Trade Dress are sold
11 nationwide and today are among the best selling dental chews for dogs in the
12 United States. Sales of products bearing the GREENIES Toothbrush Design
13 Trademark and Trade Dress and the GREENIES Packaging Design Trademark and
14 Trade Dress amount to over \$100 million annually.

15 17. Products bearing the GREENIES Toothbrush Design Trademark and
16 Trade Dress and the GREENIES Packaging Design Trademark and Trade Dress are
17 sold in different sizes and are among the best selling SKUs in the entire Pet
18 Specialty Care & Treats category.

19 18. The GREENIES Toothbrush Design Trademark and Trade Dress and
20 the GREENIES Packaging Design Trademark and Trade Dress are well-known
21 among the relevant consuming public. Products bearing the GREENIES
22 Toothbrush Design Trademark and Trade Dress and the GREENIES Packaging
23 Design Trademark and Trade Dress are the top recommended dental chews by
24 veterinarians.

25 19. As summarized above, Nutro owns numerous United States trademark
26 registrations for marks comprising or containing the GREENIES Toothbrush
27 Design Trademark and Trade Dress and the GREENIES Packaging Design
28 Trademark and Trade Dress.

1 20. Nutro's incontestable registrations provide conclusive evidence (and
2 the additional registrations provide *prima facie* evidence) of Nutro's exclusive right
3 to use its marks in commerce pursuant to 15 U.S.C. § 1115(b), and they also
4 provide nationwide constructive notice of Nutro's exclusive rights pursuant to 15
5 U.S.C. § 1072. Copies of the registration certificates and related documents
6 showing Nutro's ownership of these marks are attached as Exhibit C.

7 21. Nutro's GREENIES Toothbrush Design Trademark and Trade Dress
8 and the GREENIES Packaging Design Trademark and Trade Dress are distinctive,
9 non-functional trademarks and trade dress, and are recognized by consumers as
10 distinctive indicators of the source of Nutro's pet food products.

11 22. Nutro is the owner of all rights, title, and interest in the GREENIES
12 Toothbrush Design Trademark and Trade Dress and the GREENIES Packaging
13 Design Trademark and Trade Dress.

14 23. Nutro first used the GREENIES Toothbrush Design Trademark and
15 Trade Dress and the GREENIES Packaging Design Trademark and Trade Dress in
16 connection with the advertising and sale of pet food products in United States
17 commerce long prior to Defendant's infringing acts complained of herein.

18 24. Since the dates of first use, Nutro or its predecessor in interest have
19 continuously used the GREENIES Toothbrush Design Trademark and Trade Dress
20 and the GREENIES Packaging Design Trademark and Trade Dress to advertise,
21 promote, and sell pet food products in United States commerce.

22 25. Goods bearing the GREENIES Toothbrush Design Trademark and
23 Trade Dress and the GREENIES Packaging Design Trademark and Trade Dress are
24 disseminated in the United States through various trade channels, including pet
25 specialty stores such as Kirby's Pet Depot stores; online pet specialty retailers such
26 as DigItPet.com; general online retailers such as Amazon.com; and veterinary trade
27 channels.

1 26. Goods bearing the GREENIES Toothbrush Design Trademark and
2 Trade Dress and the GREENIES Packaging Design Trademark and Trade Dress are
3 sold in this judicial district, throughout the State of California, and throughout the
4 United States.

5 27. Since well prior to the acts complained of herein, the GREENIES
6 Toothbrush Design Trademark and Trade Dress and the GREENIES Packaging
7 Design Trademark and Trade Dress have been widely publicized through
8 substantial advertising and promotion in the State of California and throughout the
9 United States.

10 28. As a result of Nutro's substantial advertising and sales, the
11 GREENIES Toothbrush Design Trademark and Trade Dress and the GREENIES
12 Packaging Design Trademark and Trade Dress have become valuable assets and
13 well-known symbols of Nutro's substantial goodwill throughout the United States,
14 and the general public has come to associate the GREENIES Toothbrush Design
15 Trademark and Trade Dress and the GREENIES Packaging Design Trademark and
16 Trade Dress with high-quality goods manufactured and distributed by Nutro.

17 29. The GREENIES Toothbrush Design Trademark and Trade Dress and
18 the GREENIES Packaging Design Trademark and Trade Dress are inherently
19 distinctive or have acquired distinctiveness as unique indicators of source for
20 Nutro's goods.

21 30. The overall look, feel, appearance, and features of the GREENIES
22 Toothbrush Design Trademark and Trade Dress and the GREENIES Packaging
23 Design Trademark and Trade Dress, and their forms, shapes, images, materials, and
24 styling, are unique, original, non-functional, and proprietary assets owned by Nutro.

25 **DEFENDANT'S INFRINGING AND UNLAWFUL CONDUCT**

26 31. Without authorization from Nutro, and despite Nutro's prior use of and
27 rights in the GREENIES Toothbrush Design Trademark and Trade Dress,
28 Defendant is manufacturing, selling, advertising, promoting, and distributing,

1 within this judicial district and in interstate commerce, canine dental chews in a
 2 product configuration that so closely imitates the GREENIES Toothbrush Design
 3 Trademark and Trade Dress (the “Infringing Toothbrush Design Trademark and
 4 Trade Dress”) as to create a likelihood of confusion, mistake, and deception among
 5 consumers as to source, sponsorship, or affiliation.

6 32. The Infringing Toothbrush Design Trademark and Trade Dress, like
 7 the GREENIES Toothbrush Design Trademark and Trade Dress, features the head
 8 of a toothbrush at one end connected to a bone-like handle.

9 33. In addition, Defendant’s products, like Nutro’s products, are sold with
 10 the color green applied to the entire surface of the chew.

11 34. An example of Defendant’s products bearing the Infringing
 12 Toothbrush Design Trademark and Trade Dress is depicted below, and in Exhibit D
 13 attached hereto.



19 35. Side-by-side images of the parties’ respective products are depicted
 20 below, with Defendant’s product on top and Nutro’s product on the bottom:



1 36. Upon information and belief, Defendant has advertised and sold, and is
2 advertising and selling, products bearing the Infringing Toothbrush Design
3 Trademark and Trade Dress under the word marks GUMBONE and TEETH
4 TREAT.

5 37. When sold under the GUMBONE mark, Defendant's products are
6 advertised and sold in packaging that so closely imitates the GREENIES Packaging
7 Design Trademark and Trade Dress (the "Infringing Packaging Design Trademark
8 and Trade Dress") as to create a likelihood of confusion, mistake, and deception
9 among consumers as to source, sponsorship, or affiliation.

10 38. Defendant adopted, has used, and is using the Infringing Packaging
11 Design Trademark and Trade Dress without authorization from Nutro.

12 39. Defendant's Infringing Packaging Design Trademark and Trade Dress,
13 like the GREENIES Packaging Design Trademark Trade Dress, depicts the
14 following elements: a trademark beginning with the letter "G" displayed in arched
15 green lettering; below that, an image of a dog with a green elongated toothbrush-
16 shaped dental chew in its mouth; below that, an image of a green elongated
17 toothbrush-shaped dental chew with a white star on the bristles of the chew design;
18 an image of a white tooth near the edge of the package; and a two-toned
19 background featuring a U-shaped green border. An image of the Infringing
20 Packaging Design Trademark and Trade Dress is depicted below, and in Exhibit E
21 attached hereto.



40. Side-by-side images of the parties' respecting packaging are depicted below:



41. Defendant's packaging for its GUMBONE and TEETH TREET products features clear windows through which products bearing the Infringing Toothbrush Design Trademark and Trade Dress are visible. See Exhibits E and F.

1 42. In the State of California and in this judicial district, Defendant's
2 products and packaging bearing the Infringing Toothbrush Design Trademark and
3 Trade Dress and the Infringing Packaging Design Trademark and Trade Dress have
4 been and are currently offered for sale through various channels of trade, including
5 pet specialty stores such as Kirby's Pet Depot stores; online pet specialty retailers
6 such as DigItPet.com; and general online retailers such as Amazon.com.

7 43. Defendant's products bearing the Infringing Toothbrush Design
8 Trademark and Trade Dress and the Infringing Packaging Design Trademark and
9 Trade Dress are identical in nature to the products sold by Nutro under the
10 GREENIES Toothbrush Design Trademark and Trade Dress and the GREENIES
11 Packaging Design Trademark and Trade Dress, namely, dental chews for dogs.

12 44. Defendant's products bearing the Infringing Toothbrush Design
13 Trademark and Trade Dress and the Infringing Packaging Design Trademark and
14 Trade Dress are directly competitive with the products sold by Nutro under the
15 GREENIES Toothbrush Design Trademark and Trade Dress and the GREENIES
16 Packaging Design Trademark and Trade Dress, namely, dental chews for dogs.

17 45. The target customers of Defendant's products bearing the Infringing
18 Toothbrush Design Trademark and Trade Dress and the Infringing Packaging
19 Design Trademark and Trade Dress are the same as the target customers of products
20 sold by Nutro under its GREENIES Toothbrush Design Trademark and Trade
21 Dress and the GREENIES Packaging Design Trademark and Trade Dress.

22 46. Defendant's products bearing the Infringing Toothbrush Design
23 Trademark and Trade Dress and the Infringing Packaging Design Trademark and
24 Trade Dress are being advertised and offered for sale in the identical trade channels
25 as products sold by Nutro under its GREENIES Toothbrush Design Trademark and
26 Trade Dress and the GREENIES Packaging Design Trademark and Trade Dress.

27 47. Defendant's products bearing the Infringing Toothbrush Design
28 Trademark and Trade Dress and the Infringing Packaging Design Trademark and

1 Trade Dress are being offered for sale in the same retail store locations as products
2 sold by Nutro under its GREENIES Toothbrush Design Trademark and Trade
3 Dress and the GREENIES Packaging Design Trademark and Trade Dress,
4 including but not limited to pet specialty stores such as Kirby's Pet Depot stores;
5 online pet specialty retailers such as DigItPet.com; and general online retailers such
6 as Amazon.com.

7 48. Defendant's advertising and sale of products bearing the Infringing
8 Toothbrush Design Trademark and Trade Dress and the Infringing Packaging
9 Design Trademark and Trade Dress create the false impression that Defendant and
10 its goods are affiliated with, sponsored by, approved by, or endorsed by Nutro.

11 49. Defendant's advertising and sale of products bearing the Infringing
12 Toothbrush Design Trademark and Trade Dress and the Infringing Packaging
13 Design Trademark and Trade Dress are likely to cause confusion, mistake, or
14 deception as to the source and origin of Defendant's products among customers and
15 prospective customers who encounter Defendant's products.

16 50. Upon information and belief, Defendant had full knowledge of Nutro's
17 rights in the GREENIES Toothbrush Design Trademark and Trade Dress and the
18 GREENIES Packaging Design Trademark and Trade Dress prior to Defendant's
19 adoption and use of the Infringing Toothbrush Design Trademark and Trade Dress
20 and the Infringing Packaging Design Trademark and Trade Dress.

21 51. Upon information and belief, Defendant intentionally and willfully
22 adopted the Infringing Toothbrush Design Trademark and Trade Dress and the
23 Infringing Packaging Design Trademark and Trade Dress to copy the GREENIES
24 Toothbrush Design Trademark and Trade Dress and the GREENIES Packaging
25 Design Trademark and Trade Dress with a deliberate intent to cause confusion and
26 to trade on the significant reputation and goodwill of Nutro and its industry-leading
27 GREENIES canine dental chews.

1 52. Upon information and belief, Defendant adopted and is using the
2 Infringing Toothbrush Design Trademark and Trade Dress and the Infringing
3 Packaging Design Trademark and Trade Dress to mislead purchasers and
4 prospective purchasers into believing falsely that Defendant's goods are
5 manufactured by, licensed by, sponsored by, endorsed by, or otherwise affiliated
6 with Nutro.

7 53. Upon information and belief, Defendant has engaged in this unlawful
8 activity with a willful and deliberate intent to cause a likelihood of confusion
9 among the purchasing public and to trade on the significant goodwill symbolized by
10 the GREENIES Toothbrush Design Trademark and Trade Dress and the
11 GREENIES Packaging Design Trademark and Trade Dress.

12 54. In February 2013, having learned of Defendant's adoption and use of
13 the Infringing Toothbrush Design Trademark and Trade Dress and the Infringing
14 Packaging Design Trademark and Trade Dress, Nutro's counsel sent a cease-and-
15 desist letter to Defendant requesting that it immediately and voluntarily discontinue
16 its unlawful activity.

17 55. After the cease-and-desist letter was sent, Nutro and Defendant
18 engaged in discussions in an effort to resolve the dispute.

19 56. The discussions have not led to a resolution, and Defendant has
20 continued using the Infringing Toothbrush Design Trademark and Trade Dress and
21 the Infringing Packaging Design Trademark and Trade Dress in a manner likely to
22 deceive and cause confusion among purchasers and prospective purchasers.

23 57. Defendant has continued and, upon information and belief, plans to
24 continue such infringing use despite having full knowledge of Nutro's prior rights
25 in the GREENIES Toothbrush Design Trademark and Trade Dress and the
26 GREENIES Packaging Design Trademark and Trade Dress.

**FOR A FIRST CAUSE OF ACTION
(TRADEMARK INFRINGEMENT IN VIOLATION OF UNITED STATES
STATUTES, 15 U.S.C. § 1114(1))**

58. The foregoing paragraphs of this Complaint are incorporated by reference as a part of this count. As a separate cause of action and ground for relief, Nutro alleges that Defendant has and is engaged in acts of trademark infringement, in violation of 15 U.S.C § 1114(1).

59. Nutro owns numerous federal trademark registrations on the Principal Register for its GREENIES Toothbrush Design Trademark and Trade Dress, the GREENIES Packaging Design Trademark and Trade Dress, and marks contained within the GREENIES Packaging Design Trademark and Trade Dress.

60. Defendant has used and is using the Infringing Toothbrush Design Trademark and Trade Dress and the Infringing Packaging Design Trademark and Trade Dress in connection with the advertising and sale of goods in commerce without Nutro's consent in such a manner as to create a likelihood of confusion with Nutro's federally registered trademarks for the GREENIES Toothbrush Design Trademark and Trade Dress and the GREENIES Packaging Design Trademark and Trade Dress.

61. Defendant's use of the Infringing Toothbrush Design Trademark and Trade Dress and the Infringing Packaging Design Trademark and Trade Dress induces prospective purchasers and others to believe, contrary to fact, that the goods sold by Defendant are rendered, sponsored, or otherwise approved by, or connected with, Nutro. Defendant's acts have damaged, impaired, and diluted the goodwill symbolized by Nutro's GREENIES Toothbrush Design Trademark and Trade Dress and the GREENIES Packaging Design Trademark and Trade Dress to Nutro's immediate and irreparable damage.

62. Defendant's use of marks identical or confusingly similar to Nutro's GREENIES Toothbrush Design Trademark and Trade Dress and the GREENIES

1 Packaging Design Trademark and Trade Dress constitutes trademark infringement
2 within the meaning of 15 U.S.C § 1114(1).

3 63. Upon information and belief, Defendant had actual knowledge of
4 Nutro's exclusive rights in the GREENIES Toothbrush Design Trademark and
5 Trade Dress and the GREENIES Packaging Design Trademark and Trade Dress
6 when it began using the Infringing Toothbrush Design Trademark and Trade Dress
7 and the Infringing Packaging Design Trademark and Trade Dress. In addition,
8 Defendant has continued its unlawful conduct despite receiving a cease-and-desist
9 letter from Nutro. Thus, Defendant has willfully and deliberately engaged in the
10 aforesaid acts with reckless disregard for Nutro's rights and an intent to injure
11 Nutro and deceive the public.

12 64. Defendant's wrongful acts have proximately caused and will continue
13 to cause Nutro substantial injury, including loss of profits, confusion of potential
14 customers, damage to Nutro's goodwill and reputation, and diminution in the value
15 of Nutro's marks and trade dress, entitling Nutro to remedies under 15 U.S.C. §
16 1114.

17 65. Unless enjoined by this Court, Defendant will continue these acts of
18 trademark infringement to Nutro's immediate and irreparable damage.

19 **FOR A SECOND CAUSE OF ACTION**
20 **(TRADE DRESS INFRINGEMENT IN VIOLATION OF THE STATUTES**
21 **OF THE UNITED STATES, 15 U.S.C. § 1125(a))**

22 66. The foregoing paragraphs of this Complaint are incorporated by
23 reference as a part of this count. As a separate cause of action and ground for relief,
24 Nutro alleges that Defendant has and is engaged in acts of trade dress infringement
25 that give rise to a cause of action under Section 43(a) of the Trademark Act, 15
26 U.S.C. § 1125(a).

27 67. The GREENIES Toothbrush Design Trademark and Trade Dress and
28 the GREENIES Packaging Design Trademark and Trade Dress are non-functional
trade dress and are inherently distinctive or have acquired distinctiveness among

1 consumers and prospective consumers as indicators of origin identifying Nutro as
2 the source of products bearing that trade dress to the public throughout the State of
3 California and the United States.

4 68. Due to such reputation and public awareness, Nutro has established
5 valuable goodwill in connection with the GREENIES Toothbrush Design
6 Trademark and Trade Dress and the GREENIES Packaging Design Trademark and
7 Trade Dress.

8 69. Without Nutro's consent, Defendant has used and is using the
9 Infringing Toothbrush Design Trademark and Trade Dress and the Infringing
10 Packaging Design Trademark and Trade Dress, which are confusingly similar to the
11 GREENIES Toothbrush Design Trademark and Trade Dress and the GREENIES
12 Packaging Design Trademark and Trade Dress, in connection with the advertising
13 and sale of goods in commerce in such a manner as to create a likelihood of
14 confusion among prospective purchasers, and to compete unfairly with Nutro.

15 70. Defendant's use of the Infringing Toothbrush Design Trademark and
16 Trade Dress and the Infringing Packaging Design Trademark and Trade Dress
17 induces prospective purchasers and others to believe, contrary to fact, that the
18 goods sold by Defendant are rendered, sponsored, or otherwise approved by, or
19 connected with, Nutro.

20 71. Upon information and belief, Defendant had actual knowledge of
21 Nutro's exclusive rights in the GREENIES Toothbrush Design Trademark and
22 Trade Dress and the GREENIES Packaging Design Trademark and Trade Dress
23 when it engaged in the conduct complained of herein. In addition, Defendant has
24 continued its unlawful conduct despite receiving a cease-and-desist letter from
25 Nutro. Thus, Defendant has willfully and deliberately engaged in the aforesaid acts
26 with an intent to injure Nutro and to deceive the public.

27 72. Defendant's acts have damaged, impaired, and diluted Nutro's
28 goodwill symbolized by its GREENIES Toothbrush Design Trademark and Trade

1 Dress and the GREENIES Packaging Design Trademark and Trade Dress to
 2 Nutro's immediate and irreparable damage.

3 73. Defendant's unauthorized use of the Infringing Toothbrush Design
 4 Trademark and Trade Dress and the Infringing Packaging Design Trademark and
 5 Trade Dress constitutes trade dress infringement of the GREENIES Toothbrush
 6 Design Trademark and Trade Dress and the GREENIES Packaging Design
 7 Trademark and Trade Dress under 15 U.S.C § 1125(a).

8 74. Unless enjoined by the Court, Defendant will continue these acts of
 9 infringement, thereby deceiving the public and causing Nutro immediate and
 10 irreparable damage, entitling Nutro to remedies under 15 U.S.C. § 1116 and 1117.

11 **FOR A THIRD CAUSE OF ACTION**
 12 **(FALSE DESIGNATION OF ORIGIN AND UNFAIR COMPETITION**
 13 **UNDER THE STATUTES OF THE UNITED STATES, 15 U.S.C. § 1125(a))**

14 75. The foregoing paragraphs of this Complaint are incorporated by
 15 reference as a part of this count. As a separate cause of action and ground for relief,
 16 Nutro alleges that Defendant has and is engaged in the use of a false designation of
 17 origin and in similar acts of unfair competition in violation of Section 43(a) of the
 18 Trademark Act of 1946, 15 U.S.C § 1125(a).

19 76. Defendant has used and is using the Infringing Toothbrush Design
 20 Trademark and Trade Dress and the Infringing Packaging Design Trademark and
 21 Trade Dress without Nutro's consent in connection with the advertising and sale of
 22 goods in commerce in such a manner as to create a likelihood of confusion among
 23 prospective purchasers and to compete unfairly with Nutro.

24 77. Defendant's use of the Infringing Toothbrush Design Trademark and
 25 Trade Dress and the Infringing Packaging Design Trademark and Trade Dress
 26 induces prospective purchasers and others to believe, contrary to fact, that the
 27 goods sold by Defendant are rendered, sponsored, or otherwise approved by, or
 28 connected with, Nutro.

1 78. Defendant's acts have a substantial economic effect on interstate
2 commerce because goods bearing the Infringing Toothbrush Design Trademark and
3 Trade Dress and the Infringing Packaging Design Trademark and Trade Dress are
4 advertised and sold in interstate commerce, and because Nutro's goods bearing the
5 GREENIES Toothbrush Design Trademark and Trade Dress and the GREENIES
6 Packaging Design Trademark and Trade Dress are also advertised and sold in
7 interstate commerce.

8 79. Defendant's acts have damaged, impaired, and diluted that part of
9 Nutro's goodwill symbolized by Nutro's GREENIES Toothbrush Design
10 Trademark and Trade Dress and the GREENIES Packaging Design Trademark and
11 Trade Dress to Nutro's immediate and irreparable damage.

12 80. Defendant's use of marks identical or confusingly similar to Nutro's
13 GREENIES Toothbrush Design Trademark and Trade Dress and the GREENIES
14 Packaging Design Trademark and Trade Dress constitutes a false designation of
15 origin and a false description within the meaning of Section 43(a) of the Trademark
16 Act of 1946, 15 U.S.C § 1125(a).

17 81. Defendant's use of marks identical or confusingly similar to Nutro's
18 GREENIES Toothbrush Design Trademark and Trade Dress and the GREENIES
19 Packaging Design Trademark and Trade Dress constitutes unfair competition
20 entitling Nutro to remedies pursuant to Section 43(a) of the Trademark Act of 1946,
21 15 U.S.C § 1125(a).

22 82. Upon information and belief, Defendant had actual knowledge of
23 Nutro's exclusive rights in the GREENIES Toothbrush Design Trademark and
24 Trade Dress and the GREENIES Packaging Design Trademark and Trade Dress
25 when it began using the Infringing Toothbrush Design Trademark and Trade Dress
26 and the Infringing Packaging Design Trademark and Trade Dress. In addition,
27 Defendant has continued its unlawful conduct despite receiving a cease-and-desist
28

1 letter from Nutro. Thus, Defendant has willfully and deliberately engaged in the
2 aforesaid acts with an intent to injure Nutro and deceive the public.

3 83. Defendant's deliberate acts of unfair competition, false designation of
4 origin, and false description have caused Nutro irreparable injury and loss of
5 reputation entitling Nutro to remedies under 15 U.S.C. § 1125. Unless enjoined by
6 this Court, Defendant will continue these unlawful acts to Nutro's immediate and
7 irreparable damage.

8 **FOR A FOURTH CAUSE OF ACTION**
9 **(TRADEMARK INFRINGEMENT UNDER THE COMMON LAW)**

10 84. The foregoing paragraphs of this Complaint are incorporated by
11 reference as a part of this count. As a separate cause of action and ground for relief,
12 Nutro alleges that Defendant has and is engaged in acts of trademark infringement
13 in violation of the common law.

14 85. Nutro owns common law trademark rights in its GREENIES
15 Toothbrush Design Trademark and Trade Dress and the GREENIES Packaging
16 Design Trademark and Trade Dress.

17 86. Defendant has used and is using the Infringing Toothbrush Design
18 Trademark and Trade Dress and the Infringing Packaging Design Trademark and
19 Trade Dress without Nutro's consent in connection with the advertising and sale of
20 goods in commerce in such a manner as to create a likelihood of confusion with
21 Nutro's GREENIES Toothbrush Design Trademark and Trade Dress and the
22 GREENIES Packaging Design Trademark and Trade Dress among prospective
23 purchasers.

24 87. Defendant's use of the Infringing Toothbrush Design Trademark and
25 Trade Dress and the Infringing Packaging Design Trademark and Trade Dress
26 induces prospective purchasers and others to believe, contrary to fact, that the
27 goods sold by Defendant are rendered, sponsored, or otherwise approved by, or
28 connected with, Nutro. Defendant's acts have damaged, impaired and diluted

1 Nutro's goodwill symbolized by its GREENIES Toothbrush Design Trademark and
2 Trade Dress and the GREENIES Packaging Design Trademark and Trade Dress to
3 Nutro's immediate and irreparable damage.

4 88. The nature, probable tendency, and effect of Defendant's use of marks
5 identical or confusingly similar to Nutro's GREENIES Toothbrush Design
6 Trademark and Trade Dress and the GREENIES Packaging Design Trademark and
7 Trade Dress is to enable Defendant to deceive the public by passing off its goods as
8 being rendered, sponsored, or otherwise approved by, or connected with, Nutro.

9 89. Defendant's use of marks identical or confusingly similar to Nutro's
10 GREENIES Toothbrush Design Trademark and Trade Dress and the GREENIES
11 Packaging Design Trademark and Trade Dress in connection with the advertising
12 and sale of its goods is likely to cause confusion, mistake, and deception as to the
13 source or origin of Defendant's goods and constitutes infringement of Nutro's
14 GREENIES Toothbrush Design Trademark and Trade Dress and the GREENIES
15 Packaging Design Trademark and Trade Dress under the common law.

16 90. Upon information and belief, Defendant had actual knowledge of
17 Nutro's GREENIES Toothbrush Design Trademark and Trade Dress and the
18 GREENIES Packaging Design Trademark and Trade Dress when it began using the
19 Infringing Toothbrush Design Trademark and Trade Dress and the Infringing
20 Packaging Design Trademark and Trade Dress. In addition, Defendant has
21 continued its unlawful conduct despite receiving a cease-and-desist letter from
22 Nutro. Thus, Defendant has willfully and deliberately engaged in the aforesaid acts
23 with an intent to injure Nutro and deceive the public.

24 91. Defendant's deliberate acts of trademark infringement have caused
25 Nutro irreparable injury and loss of reputation entitling Nutro to remedies available
26 under the common law. Unless enjoined by this Court, Defendant will continue
27 these acts of trademark infringement to Nutro's immediate and irreparable damage.

28

**FOR A FIFTH CAUSE OF ACTION
(TRADE DRESS INFRINGEMENT UNDER THE COMMON LAW)**

92. The foregoing paragraphs of this Complaint are incorporated by reference as a part of this count. As a separate cause of action and ground for relief, Nutro alleges that Defendant has and is engaged in acts of trade dress infringement in violation of the common law.

93. The GREENIES Toothbrush Design Trademark and Trade Dress and the GREENIES Packaging Design Trademark and Trade Dress are non-functional trade dress and are inherently distinctive or have acquired distinctiveness among consumers and prospective consumers as indicators of source identifying Nutro as the source of products bearing that trade dress to the public throughout the State of California and the United States. Due to such reputation and public awareness, Nutro has established valuable goodwill in the GREENIES Toothbrush Design Trademark and Trade Dress and the GREENIES Packaging Design Trademark and Trade Dress.

94. Without Nutro's consent, Defendant has used and is using the Infringing Toothbrush Design Trademark and Trade Dress and the Infringing Packaging Design Trademark and Trade Dress, which are confusingly similar to the GREENIES Toothbrush Design Trademark and Trade Dress and the GREENIES Packaging Design Trademark and Trade Dress, in connection with the advertising and sale of goods in commerce in such a manner as to create a likelihood of confusion among prospective purchasers, and to compete unfairly with Nutro.

95. Defendant's use of the Infringing Toothbrush Design Trademark and Trade Dress and the Infringing Packaging Design Trademark and Trade Dress induces prospective purchasers and others to believe, contrary to fact, that the goods sold by Defendant are rendered, sponsored, or otherwise approved by, or connected with, Nutro.

1 96. Upon information and belief, Defendant had actual knowledge of
 2 Nutro's exclusive rights in the GREENIES Toothbrush Design Trademark and
 3 Trade Dress and the GREENIES Packaging Design Trademark and Trade Dress
 4 when it engaged in the conduct complained of herein. In addition, Defendant has
 5 continued its unlawful conduct despite receiving a cease-and-desist letter from
 6 Nutro. Thus, Defendant has willfully and deliberately engaged in the aforesaid acts
 7 with an intent to injure Nutro and to deceive the public.

8 97. Defendant's acts have damaged, impaired, and diluted Nutro's
 9 goodwill symbolized by its GREENIES Toothbrush Design Trademark and Trade
 10 Dress and the GREENIES Packaging Design Trademark and Trade Dress to
 11 Nutro's immediate and irreparable damage.

12 98. Defendant's unauthorized use of the Infringing Toothbrush Design
 13 Trademark and Trade Dress and the Infringing Packaging Design Trademark and
 14 Trade Dress constitutes trade dress infringement of the GREENIES Toothbrush
 15 Design Trademark and Trade Dress and the GREENIES Packaging Design
 16 Trademark and Trade Dress under the common law.

17 99. Unless enjoined by this Court, Defendant will continue these acts of
 18 trade dress infringement, thereby deceiving the public and causing Nutro immediate
 19 and irreparable damage entitling Nutro to remedies available under the common
 20 law.

21 **FOR A SIXTH CAUSE OF ACTION**
 22 **(UNFAIR COMPETITION UNDER CAL. BUS. & PROF. CODE § 17200)**

23 100. The foregoing paragraphs of this Complaint are incorporated by
 24 reference as a part of this count. As a separate cause of action and ground for relief,
 25 Nutro alleges that Defendant has and is engaged in acts that constitute unfair
 26 competition in violation of California Business and Professions Code section
 27 17200, *et seq.*

101. As alleged above, Defendant has infringed and intends to continue infringing Nutro's GREENIES Toothbrush Design Trademark and Trade Dress and the GREENIES Packaging Design Trademark and Trade Dress.

102. Defendant's activities are likely to confuse, deceive, or mislead the public as to the origin or sponsorship of Defendant's goods.

103. Defendant has attempted and is attempting to trade on the goodwill associated with Nutro's GREENIES Toothbrush Design Trademark and Trade Dress and the GREENIES Packaging Design Trademark and Trade Dress.

104. Defendant's wrongful acts have proximately caused and will continue to cause Nutro substantial injury, including loss of profits, confusion of potential customers, damage to Nutro's goodwill and reputation, and diminution in the value of Nutro's marks and trade dress.

105. Defendant's acts of unfair competition, unless enjoined by the Court, will continue to cause Nutro to sustain irreparable damage, loss, and injury, for which Nutro has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Nutro prays for judgment against Defendant as follows:

(1) Pursuant to 15 U.S.C. § 1116 and the common law, that Defendant and each of its agents, servants, employees, attorneys, officers, and all others in privity and acting in concert with them be permanently enjoined from:

- (a) using, registering, or applying to register the Infringing Toothbrush Design Trademark and Trade Dress, the Infringing Packaging Design Trademark and Trade Dress, or any other trademark, design, or trade dress similar to Nutro's GREENIES Toothbrush Design Trademark and Trade Dress, the GREENIES Packaging Design Trademark and Trade Dress, and marks contained within the GREENIES Packaging Design Trademark and Trade

1 Dress in connection with the sale, advertising, promotion,
 2 or distribution of any pet food, pet treats, pet chews, or
 3 related goods;

4 (b) using or authorizing others to use in any manner any
 5 trademark, design, or combination thereof which imitates,
 6 resembles, or suggests Nutro's trademarks and trade
 7 dress;

8 (c) otherwise infringing Nutro's trademarks and trade dress;

9 (d) unfairly competing with Nutro, diluting the distinctiveness of Nutro's
 10 GREENIES Toothbrush Design Trademark and Trade Dress or the
 11 GREENIES Packaging Design Trademark and Trade Dress, and
 12 otherwise injuring Nutro's business reputation in any manner;

13 (e) imposing a constructive trust on all sales of any goods that infringe
 14 Nutro's GREENIES Toothbrush Design Trademark and Trade Dress
 15 or the GREENIES Packaging Design Trademark and Trade Dress;

16 (2) Pursuant to 15 U.S.C. § 1118, that Defendant be directed to deliver up
 17 for destruction all packages, labels, advertisements, promotions, point of sale
 18 materials, signs, prints, and all other materials in their possession or under their
 19 control that resemble the GREENIES Toothbrush Design Trademark and Trade
 20 Dress or the GREENIES Packaging Design Trademark and Trade Dress;

21 (3) Pursuant to 15 U.S.C. § 1117, 15 U.S.C. § 1125, and the common law,
 22 that Defendant account and pay Nutro damages in an amount sufficient to fairly
 23 compensate it for the injury it has sustained, plus all the profits that are attributable
 24 to Defendant's use of the Infringing Toothbrush Design Trademark and Trade
 25 Dress and the Infringing Packaging Design Trademark and Trade Dress, and such
 26 sums as the Court finds to be just, and further, that the amount of the monetary
 27 award granted be trebled in view of the willful and deliberate nature of Defendant's
 28 unlawful conduct;

(4) Pursuant to 15 U.S.C. § 1117, 15 U.S.C. § 1125, and the common law, that this be held to be an exceptional case and that Defendant be ordered to pay to Nutro the costs of this action and Nutro's reasonable attorneys' fees;

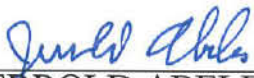
(5) Nutro be granted such other, further, different, or additional relief as this Court deems equitable and proper.

JURY DEMAND

Nutro demands a trial by jury in connection with this Complaint against Defendant.

Dated: November 6, 2013

Respectfully submitted,
ARENT FOX LLP

By: 
JERROLD ABELES
Attorneys for Plaintiff
The Nutro Company

Of Counsel:

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*Attorneys for Plaintiff
The Nutro Company*

EXHIBIT A

EXHIBIT A

Image of GREENIES Product Bearing the GREENIES Toothbrush Design Trademark and Trade Dress



EXHIBIT B

EXHIBIT B

Images of Packaging Bearing the GREENIES Packaging Design Trademark and Trade Dress





EXHIBIT C

EXHIBIT C

**Registration Certificates and Related Documents Showing
Nutro's Ownership of the GREENIES Toothbrush Design
Trademark and Trade Dress and the GREENIES Packaging
Design Trademark and Trade Dress**



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Goods and Services	IC 031. US 001 046. G & S: PET SNACK FOOD. FIRST USE: 20001100. FIRST USE IN COMMERCE: 20001100
Mark Drawing Code	(2) DESIGN ONLY
Design Search Code	03.13.02 - Bones (animals, four-footed mammals); Skeletons (animals, four-footed mammals); Skulls (animals, four-footed mammals) 10.05.01 - Tooth brushes
Serial Number	78347124
Filing Date	December 31, 2003
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	January 31, 2006
Registration Number	3122596
Registration Date	August 1, 2006
Owner	(REGISTRANT) S&M NUTEC, LLC LIMITED LIABILITY COMPANY MISSOURI 1 DESIGN DRIVE NORTH KANSAS CITY MISSOURI 64116 (LAST LISTED OWNER) THE NUTRO COMPANY CORPORATION CALIFORNIA 1550 W. McEwen Drive Franklin TENNESSEE 37067
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Cristina A. Carvalho
Description of Mark	The color(s) GREEN is/are claimed as a feature of the mark. The mark consists of A CONFIGURATION OF A DOG BONE WITH THE SHAPE OF A HEAD OF A TOOTH BRUSH AT ONE END, ALL PORTIONS ARE THE COLOR GREEN.
Type of Mark	TRADEMARK

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Register PRINCIPAL-2(F)-IN PART
Affidavit Text SECT 15. SECT 8 (6-YR).
Live/Dead Indicator LIVE
Distinctiveness
Limitation Statement as to the configuration of the goods

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Int. Cl.: 31

Prior U.S. Cls.: 1 and 46

United States Patent and Trademark Office

Reg. No. 3,122,596

Registered Aug. 1, 2006

**TRADEMARK
PRINCIPAL REGISTER**



S&M NUTEC, LLC (MISSOURI LTD LIAB CO)
1 DESIGN DRIVE
NORTH KANSAS CITY, MO 64116

THE MARK CONSISTS OF A CONFIGURATION
OF A DOG BONE WITH THE SHAPE OF A HEAD OF
A TOOTH BRUSH AT ONE END, ALL PORTIONS
ARE THE COLOR GREEN.

FOR: PET SNACK FOOD, IN CLASS 31 (U.S. CLS. 1
AND 46).

SEC. 2(F) AS TO THE CONFIGURATION OF THE
GOODS.

FIRST USE 11-0-2000; IN COMMERCE 11-0-2000.

SER. NO. 78-347,124, FILED 12-31-2003.

THE COLOR(S) GREEN IS/ARE CLAIMED AS A
FEATURE OF THE MARK.

WILLIAM BRECKENFELD, EXAMINING ATTOR-
NEY



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Trademark Assignment Abstract of Title

Total Assignments: 3

Serial #: [Z8347124](#)

Filing Dt: 12/31/2003

Reg #: [3122596](#)

Reg. Dt: 08/01/2006

Registrant: S&M NUTEC, LLC

Mark:

Assignment: 1

Reel/Frame: [3913/0798](#)

Recorded: 01/06/2009

Pages: 20

Conveyance: MERGER EFFECTIVE 12282008

Assignor: [S&M NUTEC, LLC](#)

Exec Dt: 12/22/2008

Entity Type: LIMITED LIABILITY COMPANY

Citizenship: MISSOURI

Entity Type: CORPORATION

Citizenship: CALIFORNIA

Assignee: [NUTRO PRODUCT, INC.](#)

315 COOL SPRINGS BOULEVARD
FRANKLIN, TENNESSEE 37067

Correspondent: CRISTINA A. CARVALHO

1050 CONNECTICUT AVENUE, NW
TM DOCKET
WASHINGTON, DC 20036-5339

Assignment: 2

Reel/Frame: [3927/0116](#)

Recorded: 01/28/2009

Pages: 23

Conveyance: CORRECTIVE ASSIGNMENT TO CORRECT THE THE ASSIGNEE NAME FROM NUTRO PRODUCT, INC. TO NUTRO PRODUCTS, INC. PREVIOUSLY RECORDED ON REEL 003913 FRAME 0798. ASSIGNOR(S) HEREBY CONFIRMS THE MERGER.

Assignor: [S&M NUTEC, LLC](#)

Exec Dt: 12/22/2008

Entity Type: LIMITED LIABILITY COMPANY

Citizenship: MISSOURI

Entity Type: CORPORATION

Citizenship: CALIFORNIA

Assignee: [NUTRO PRODUCTS, INC.](#)

315 COOL SPRINGS BOULEVARD
FRANKLIN, TENNESSEE 37067

Correspondent: CRISTINA A. CARVALHO

1050 CONNECTICUT AVENUE, NW
TM DOCKET
WASHINGTON, DC 20036-5339

Assignment: 3

Reel/Frame: [4098/0693](#)

Recorded: 11/18/2009

Pages: 8

Conveyance: CHANGE OF NAME

Assignor: [NUTRO PRODUCTS, INC.](#)

Exec Dt: 11/10/2009

Entity Type: CORPORATION

Citizenship: CALIFORNIA

Entity Type: CORPORATION

Citizenship: CALIFORNIA

Assignee: [THE NUTRO COMPANY](#)

315 COOL SPRINGS BOULEVARD
FRANKLIN, TENNESSEE 37067

Correspondent: CRISTINA A. CARVALHO, JASON J. MAZUR

1050 CONNECTICUT AVENUE, NW
ARENT FOX TM DOCKET

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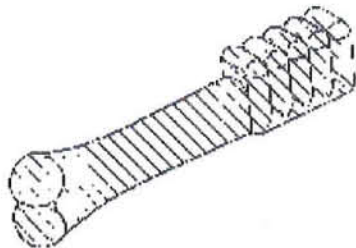
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Goods and Services	IC 031. US 001 046. G & S: PET SNACK FOOD. FIRST USE: 19960900. FIRST USE IN COMMERCE: 19980318
Mark Drawing Code	(2) DESIGN ONLY
Design Search Code	03.13.02 - Bones (animals, four-footed mammals); Skeletons (animals, four-footed mammals); Skulls (animals, four-footed mammals) 10.05.01 - Tooth brushes 10.05.05 - Brushes, body cleaning; Brushes, finger nail; Brushes, hair; Brushes, make-up; Combs, hair; Hair brushes; Hair combs; Nail brushes; Shaving brushes
Serial Number	76355642
Filing Date	January 4, 2002
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	June 24, 2003
Registration Number	3220981
Registration Date	March 27, 2007
Owner	(REGISTRANT) S&M NuTec, LLC LIMITED LIABILITY CORPORATION MISSOURI 1 DESIGN DRIVE NORTH KANSAS CITY MISSOURI 64116 (LAST LISTED OWNER) THE NUTRO COMPANY CORPORATION CALIFORNIA 1550 W. McEwen Drive Franklin TENNESSEE 37067
Assignment Recorded	ASSIGNMENT RECORDED

EXHIBIT C PAGE 38

Attorney of Record Cristina A. Carvalho
Description of Mark Color is not claimed as a feature of the mark. The mark consists of a configuration of a dog bone with the shape of a head of a tooth brush at one end. The drawing is lined for the color green, but color is not claimed as a feature of the mark.
Type of Mark TRADEMARK
Register PRINCIPAL-2(F)
Affidavit Text SECT 15. SECT 8 (6-YR).
Live/Dead Indicator LIVE

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Int. Cl.: 31

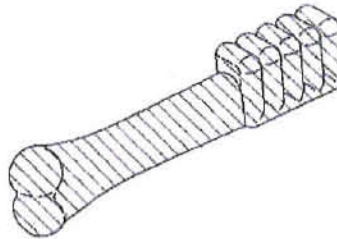
Prior U.S. Cls.: 1 and 46

United States Patent and Trademark Office

Reg. No. 3,220,981

Registered Mar. 27, 2007

**TRADEMARK
PRINCIPAL REGISTER**



S&M NUTEC, LLC (MISSOURI LIMITED LIABILITY CORPORATION)
1008 NE 94TH COURT
KANSAS CITY, MO 64155

THE MARK CONSISTS OF A CONFIGURATION OF A DOG BONE WITH THE SHAPE OF A HEAD OF A TOOTH BRUSH AT ONE END.

FOR: PET SNACK FOOD, IN CLASS 31 (U.S. CLS. 1 AND 46).

SEC. 2(F).

FIRST USE 9-0-1996; IN COMMERCE 3-18-1998.

SER. NO. 76-355,642, FILED 1-4-2002.

THE DRAWING IS LINED FOR THE COLOR GREEN, BUT COLOR IS NOT CLAIMED AS A FEATURE OF THE MARK.

BRENDAN MCCAULEY, EXAMINING ATTORNEY



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Trademark Assignment Abstract of Title

Total Assignments: 2

Serial #: [76355642](#)

Filing Dt: 01/04/2002

Reg #: [3220981](#)

Reg. Dt: 03/27/2007

Registrant: S&M NuTec, LLC

Mark:

Assignment: 1

Reel/Frame: [3927/0069](#)

Recorded: 01/28/2009

Pages: 19

Conveyance: MERGER EFFECTIVE 12282008

Assignor: [S&M NUTEC, LLC](#)

Exec Dt: 12/22/2008

Entity Type: LIMITED LIABILITY COMPANY

Citizenship: MISSOURI

Entity Type: CORPORATION

Citizenship: CALIFORNIA

Assignee: [NUTRO PRODUCTS, INC.](#)

315 COOL SPRINGS BOULEVARD
FRANKLIN, TENNESSEE 37067

Correspondent: CRISTINA A. CARVALHO

1050 CONNECTICUT AVENUE, NW
TM DOCKET
WASHINGTON, DC 20036-5339

Assignment: 2

Reel/Frame: [4098/0693](#)

Recorded: 11/18/2009

Pages: 8

Conveyance: CHANGE OF NAME

Assignor: [NUTRO PRODUCTS, INC.](#)

Exec Dt: 11/10/2009

Entity Type: CORPORATION

Citizenship: CALIFORNIA

Entity Type: CORPORATION

Citizenship: CALIFORNIA

Assignee: [THE NUTRO COMPANY](#)

315 COOL SPRINGS BOULEVARD
FRANKLIN, TENNESSEE 37067

Correspondent: CRISTINA A. CARVALHO, JASON J. MAZUR

1050 CONNECTICUT AVENUE, NW
AREN FOX TM DOCKET
WASHINGTON, DC 20036-5339

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Goods and Services	IC 031. US 001 046. G & S: pet food. FIRST USE: 20001100. FIRST USE IN COMMERCE: 20001100
Mark Drawing Code	(2) DESIGN ONLY
Design Search Code	03.13.02 - Bones (animals, four-footed mammals); Skeletons (animals, four-footed mammals); Skulls (animals, four-footed mammals) 10.05.01 - Tooth brushes 10.05.05 - Brushes, body cleaning; Brushes, finger nail; Brushes, hair; Brushes, make-up; Combs, hair; Hair brushes; Hair combs; Nail brushes; Shaving brushes
Trademark Search Facility Classification Code	ANI-MISC Part of the animals including animal bones,horns,claws,shells,eyes,coral,paws,eggs,feathers,hides or skins ART-10.05 Toilet articles; grooming devices; mirrors
Serial Number	76045608
Filing Date	May 11, 2000
Current Basis	1A
Original Filing Basis	1B
Published for Opposition	May 22, 2001
Registration Number	3340413
Registration Date	November 20, 2007
Owner	(REGISTRANT) S & M NuTec, LLC LIMITED LIABILITY COMPANY MISSOURI 1 DESIGN DRIVE NORTH KANSAS CITY MISSOURI 64116

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(LAST LISTED OWNER) THE NUTRO COMPANY CORPORATION CALIFORNIA 1550 W.
McEwen Drive Franklin TENNESSEE 37067

Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Cristina A. Carvalho
Description of Mark	Color is not claimed as a feature of the mark.
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR).
Live/Dead Indicator	LIVE

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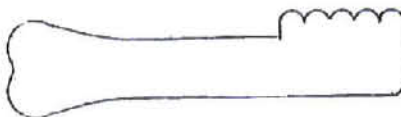
Prior U.S. Cls.: 1 and 46

United States Patent and Trademark Office

Reg. No. 3,340,413

Registered Nov. 20, 2007

**TRADEMARK
PRINCIPAL REGISTER**



**S & M NUTEC, LLC (MISSOURI LTD LIAB CO)
1 DESIGN DRIVE
NORTH KANSAS CITY, MO 64116**

FIRST USE 11-0-2000; IN COMMERCE 11-0-2000.

SN 76-045,608, FILED 5-11-2000.

**FOR: PET FOOD, IN CLASS 31 (U.S. CLS. 1 AND
46).**

BRENDAN MCCAULEY, EXAMINING ATTORNEY



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Trademark Assignment Abstract of Title

Total Assignments: 3

Serial #: 76045608

Filing Dt: 05/11/2000

Reg #: 3340413

Reg. Dt: 11/20/2007

Registrant: S & M NuTec, LLC

Mark:

Assignment: 1

Reel/Frame: 3913/0798

Recorded: 01/06/2009

Pages: 20

Conveyance: MERGER EFFECTIVE 12282008

Assignor: S&M NUTEC, LLC

Exec Dt: 12/22/2008

Entity Type: LIMITED LIABILITY COMPANY

Citizenship: MISSOURI

Entity Type: CORPORATION

Citizenship: CALIFORNIA

Assignee: NUTRO PRODUCT, INC.

315 COOL SPRINGS BOULEVARD
FRANKLIN, TENNESSEE 37067

Correspondent: CRISTINA A. CARVALHO

1050 CONNECTICUT AVENUE, NW
TM DOCKET
WASHINGTON, DC 20036-5339

Assignment: 2

Reel/Frame: 3927/0116

Recorded: 01/28/2009

Pages: 23

Conveyance: CORRECTIVE ASSIGNMENT TO CORRECT THE THE ASSIGNEE NAME FROM NUTRO PRODUCT, INC. TO NUTRO PRODUCTS, INC. PREVIOUSLY RECORDED ON REEL 003913 FRAME 0798. ASSIGNOR(S) HEREBY CONFIRMS THE MERGER.

Assignor: S&M NUTEC, LLC

Exec Dt: 12/22/2008

Entity Type: LIMITED LIABILITY COMPANY

Citizenship: MISSOURI

Entity Type: CORPORATION

Citizenship: CALIFORNIA

Assignee: NUTRO PRODUCTS, INC.

315 COOL SPRINGS BOULEVARD
FRANKLIN, TENNESSEE 37067

Correspondent: CRISTINA A. CARVALHO

1050 CONNECTICUT AVENUE, NW
TM DOCKET
WASHINGTON, DC 20036-5339

Assignment: 3

Reel/Frame: 4098/0693

Recorded: 11/18/2009

Pages: 8

Conveyance: CHANGE OF NAME

Assignor: NUTRO PRODUCTS, INC.

Exec Dt: 11/10/2009

Entity Type: CORPORATION

Citizenship: CALIFORNIA

Entity Type: CORPORATION

Citizenship: CALIFORNIA

Assignee: THE NUTRO COMPANY

315 COOL SPRINGS BOULEVARD
FRANKLIN, TENNESSEE 37067

Correspondent: CRISTINA A. CARVALHO, JASON J. MAZUR

1050 CONNECTICUT AVENUE, NW
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WASHINGTON, DC 20036-5339

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Word Mark

GREENIES

Goods and Services

IC 031. US 001 046. G & S: Pet food; Pet treats. FIRST USE: 20080600. FIRST USE IN COMMERCE: 20080600

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code

03.01.08 - Dogs; Puppies
03.01.16 - Heads of cats, dogs, wolves, foxes, bears, lions, tigers
03.13.25 - Ears of four-footed mammals or primates (excluding humans); Eyes of four-footed mammals or primates (excluding humans); Other parts of four-footed mammals or primates (excluding humans); Snouts of four-footed mammals or primates (excluding humans); Tails of four-footed mammals or primates (excluding humans); Teeth of four-footed mammals or primates (excluding humans); Tusks of four-footed mammals or primates (excluding humans)
05.03.25 - Leaf, single; Other leaves
08.13.25 - Eggroll; Enchiladas; Potato chips; Potato chips; Rice; Salt; Snack foods; Sugar cubes; Tortilla chips
09.01.04 - Bows, decorative; Ribbons, giftwrap (gift wrap); Ribbons, hair
11.03.09 - Paper plates, empty; Plates, dinnerware, empty
26.11.21 - Rectangles that are completely or partially shaded
26.11.25 - Rectangles with one or more curved sides

Trademark Search Facility Classification Code

ANI-MISC Part of the animals including animal bones, horns, claws, shells, eyes, coral, paws, eggs, feathers, hides or skins
ART-08.13 Other foodstuffs
ART-09.01 Textiles other than clothing
ART-11.03 Containers for beverages; plates and dishes; cooking and serving ware (Non-electric)
GROT-ANI Exaggerated depiction of an animal
INAN Inanimate objects such as lighting, clouds, footprints, atomic configurations, snowflakes, rainbows, flames
SHAPES-ASTRO Astronomical shapes consisting of celestial bodies, globes and geographical maps

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SHAPES-COLORS-3-OR-MORE Design listing or lined for three or more colors
 SHAPES-GEOMETRIC Geometric figures and solids including squares, rectangles, quadrilaterals and polygons
 SHAPES-MISC Miscellaneous shaped designs
 SHAPES-OVALS Oval figures or designs including incomplete ovals and one or more ovals
 VEG Plant life such as trees, flowers, fruits, grains, nuts, wreaths, and leaves

Serial Number 77797693
Filing Date August 5, 2009
Current Basis 1A
Original Filing Basis 1A
Published for Opposition August 17, 2010
Registration Number 3869170
Registration Date November 2, 2010
Owner (REGISTRANT) THE NUTRO COMPANY CORPORATION CALIFORNIA 1550 W. McEwen Drive Franklin TENNESSEE 37067
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Cristina A. Carvalho
Prior Registrations 2874574;3122596;3220981
Description of Mark The color(s) green, tan, brown, white, orange and black is/are claimed as a feature of the mark. The mark consists of packaging for the goods containing a highly stylized green and tan double "U" shape, with an orange oval placed at the base of the inner "U" such that the orange oval overlaps with the green color of the outer "U" and the tan color of the inner "U". Inside the tan colored inner "U" is the word "GREENIES" displayed in arched green lettering; below that, the head of a brown, black, and white dog with a green dog treat in its mouth and a green leaf behind it; below that, the image of a green dog treat and below that, the aforementioned orange oval. A white tooth wrapped in a green ribbon appears in the lower left corner of the tan colored inner "U".
Type of Mark TRADEMARK
Register PRINCIPAL-2(F)-IN PART
Live/Dead Indicator LIVE
Distinctiveness Limitation Statement as to the dog treat shape

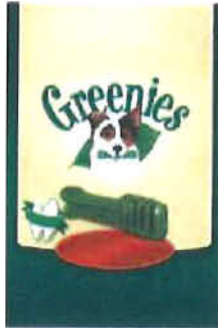
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United States of America

United States Patent and Trademark Office



Reg. No. 3,869,170

Registered Nov. 2, 2010

Int. Cl.: 31

TRADEMARK

PRINCIPAL REGISTER

THE NUTRO COMPANY (CALIFORNIA CORPORATION)
1550 W. MCEWEN DRIVE
FRANKLIN, TN 37067

FOR: PET FOOD; PET TREATS, IN CLASS 31 (U.S. CLS. 1 AND 46).

FIRST USE 6-0-2008; IN COMMERCE 6-0-2008.

OWNER OF U.S. REG. NOS. 2,874,574, 3,122,596, AND 3,220,981

THE COLOR(S) GREEN, TAN, BROWN, WHITE, ORANGE AND BLACK IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF PACKAGING FOR THE GOODS CONTAINING A HIGHLY STYLIZED GREEN AND TAN DOUBLE "U" SHAPE, WITH AN ORANGE OVAL PLACED AT THE BASE OF THE INNER "U" SUCH THAT THE ORANGE OVAL OVERLAPS WITH THE GREEN COLOR OF THE OUTER "U" AND THE TAN COLOR OF THE INNER "U". INSIDE THE TAN COLORED INNER "U" IS THE WORD "GREENIES" DISPLAYED IN ARCHED GREEN LETTERING; BELOW THAT, THE HEAD OF A BROWN, BLACK, AND WHITE DOG WITH A GREEN DOG TREAT IN ITS MOUTH AND A GREEN LEAF BEHIND IT; BELOW THAT, THE IMAGE OF A GREEN DOG TREAT AND BELOW THAT, THE AFOREMENTIONED ORANGE OVAL. A WHITE TOOTH WRAPPED IN A GREEN RIBBON APPEARS IN THE LOWER LEFT CORNER OF THE TAN COLORED INNER "U".

SEC. 2(F) AS TO THE DOG TREAT SHAPE

SER. NO. 77-797,693, FILED 8-5-2009

MARK RADEMACHER, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office



United States Patent and Trademark Office

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Trademark Assignment Abstract of Title

Total Assignments: 1

Serial #: [77797693](#)

Filing Dt: 08/05/2009

Reg #: [3869170](#)

Reg. Dt: 11/02/2010

Registrant: THE NUTRO COMPANY

Mark: GREENIES

Assignment: 1

Reel/Frame: [4098/0693](#)

Recorded: 11/18/2009

Pages: 8

Conveyance: CHANGE OF NAME

Assignor: [NUTRO PRODUCTS, INC.](#)

Exec Dt: 11/10/2009

Entity Type: CORPORATION

Citizenship: CALIFORNIA

Entity Type: CORPORATION

Citizenship: CALIFORNIA

Assignee: [THE NUTRO COMPANY](#)

315 COOL SPRINGS BOULEVARD
FRANKLIN, TENNESSEE 37067

Correspondent: CRISTINA A. CARVALHO, JASON J. MAZUR

1050 CONNECTICUT AVENUE, NW
AREN'T FOX TM DOCKET
WASHINGTON, DC 20036-5339

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Goods and Services IC 031. US 001 046. G & S: PET FOOD AND PET TREATS. FIRST USE: 19960900. FIRST USE IN COMMERCE: 19980300

Mark Drawing Code (2) DESIGN ONLY

Design Search Code
03.01.08 - Dogs; Puppies
03.01.16 - Heads of cats, dogs, wolves, foxes, bears, lions, tigers
05.03.25 - Leaf, single; Other leaves
08.01.03 - Biscuits; Brioches

Serial Number 78240761

Filing Date April 22, 2003

Current Basis 1A

Original Filing Basis 1A

Published for Opposition May 25, 2004

Change in Registration CHANGE IN REGISTRATION HAS OCCURRED

Registration Number 2874574

Registration Date August 17, 2004

Owner (REGISTRANT) S&M NUTEC, LLC LIMITED LIABILITY COMPANY MISSOURI 1 DESIGN DRIVE NORTH KANSAS CITY MISSOURI 64116

(LAST LISTED OWNER) THE NUTRO COMPANY CORPORATION CALIFORNIA 1550 W. McEwen Drive Franklin TENNESSEE 37067

Assignment Recorded ASSIGNMENT RECORDED

EXHIBIT c PAGE 51

Attorney of Record Cristina A. Carvalho
Description of Mark The mark consists of the head of a dog with a toothbrush shaped bone in its mouth and a leaf behind it.
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
Live/Dead Indicator LIVE

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Int. Cl.: 31

Prior U.S. Cls.: 1 and 46

United States Patent and Trademark Office

Reg. No. 2,874,574

Registered Aug. 17, 2004

**TRADEMARK
PRINCIPAL REGISTER**



S&M NUTEC, LLC (MISSOURI CORPORATION)
1 DESIGN DRIVE
NORTH KANSAS CITY, MO 64116

THE MARK CONSISTS OF THE HEAD OF A DOG
WITH A TOOTHBRUSH SHAPED BONE IN ITS
MOUTH AND A LEAF BEHIND IT.

FOR: PET FOOD AND PET TREATS, IN CLASS 31
(U.S. CLS. 1 AND 46).

SER. NO. 78-240,761, FILED 4-22-2003.

FIRST USE 9-0-1996; IN COMMERCE 3-0-1998.

CYNTHIA SLOAN, EXAMINING ATTORNEY



United States Patent and Trademark Office

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Trademark Assignment Abstract of Title

Total Assignments: 3

Serial #: [78240761](#)

Filing Dt: 04/22/2003

Reg #: [2874574](#)

Reg. Dt: 08/17/2004

Registrant: S&M NUTEC, LLC

Mark:

Assignment: 1

Reel/Frame: [3913/0798](#)

Recorded: 01/06/2009

Pages: 20

Conveyance: MERGER EFFECTIVE 12282008

Assignor: [S&M NUTEC, LLC](#)

Exec Dt: 12/22/2008

Entity Type: LIMITED LIABILITY COMPANY

Citizenship: MISSOURI

Entity Type: CORPORATION

Citizenship: CALIFORNIA

Assignee: [NUTRO PRODUCT, INC.](#)

315 COOL SPRINGS BOULEVARD
FRANKLIN, TENNESSEE 37067

Correspondent: CRISTINA A. CARVALHO

1050 CONNECTICUT AVENUE, NW
TM DOCKET
WASHINGTON, DC 20036-5339

Assignment: 2

Reel/Frame: [3927/0116](#)

Recorded: 01/28/2009

Pages: 23

Conveyance: CORRECTIVE ASSIGNMENT TO CORRECT THE THE ASSIGNEE NAME FROM NUTRO PRODUCT, INC. TO NUTRO PRODUCTS, INC. PREVIOUSLY RECORDED ON REEL 003913 FRAME 0798. ASSIGNOR(S) HEREBY CONFIRMS THE MERGER.

Assignor: [S&M NUTEC, LLC](#)

Exec Dt: 12/22/2008

Entity Type: LIMITED LIABILITY COMPANY

Citizenship: MISSOURI

Entity Type: CORPORATION

Citizenship: CALIFORNIA

Assignee: [NUTRO PRODUCTS, INC.](#)

315 COOL SPRINGS BOULEVARD
FRANKLIN, TENNESSEE 37067

Correspondent: CRISTINA A. CARVALHO

1050 CONNECTICUT AVENUE, NW
TM DOCKET
WASHINGTON, DC 20036-5339

Assignment: 3

Reel/Frame: [4098/0693](#)

Recorded: 11/18/2009

Pages: 8

Conveyance: CHANGE OF NAME

Assignor: [NUTRO PRODUCTS, INC.](#)

Exec Dt: 11/10/2009

Entity Type: CORPORATION

Citizenship: CALIFORNIA

Entity Type: CORPORATION

Citizenship: CALIFORNIA

Assignee: [THE NUTRO COMPANY](#)

315 COOL SPRINGS BOULEVARD
FRANKLIN, TENNESSEE 37067

Correspondent: CRISTINA A. CARVALHO, JASON J. MAZUR

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